

E 'Specially' DECS

*A weekly email update from the Division of Exceptional Children Services
to Directors of Special Education on current issues, information and events.*

May 17, 2004 - Volume 1, Number 2

Question of the Week:

Are social workers permitted to act as a "parent" under the IDEA?

The Federal IDEA regulations directly address this issue. The regulation defines "parent" at 34 CFR 300.20. It states that:

- (a)...as used in this part, the term parent means-
- (1) A natural or adoptive parent of a child;
 - (2) A guardian but not the state if the child is a ward of the state;
 - (3)...

[The identical provision is found in Kentucky's special education regulations at 707 KAR 1:280, Section 1(39)]

In essence, Federal law prohibits the State from acting as parent for a child with a disability, even if the State is the guardian. This means that the State cannot act as a parent in any of the situations in which parent action (such as parental consent) is required under the IDEA. If parental rights have not been terminated, the parent must give consent. If parental rights have been terminated, the school district must appoint a surrogate parent. The State cannot act as either a guardian or a surrogate parent.

In March 2003, the state of Vermont made an inquiry to OSEP on this same issue, i.e., does the Vermont Commissioner of Social and Rehabilitation Services have the authority under state law to make educational decisions on behalf of students under his/her custody or is this right entirely superceded by the definition of "parent " at 34 C.F.R. 300.20(a) (2). OSEP held that the term "parent" for children with disabilities eligible under Part B specifically excludes the State if the child is a ward of the state. Therefore, pursuant to the IDEA definition of parent (which includes natural and adoptive parents and guardians), the Commissioner cannot serve in the role of a parent and make educational decisions on behalf of a child with a disability who is a ward of the state. See *Letter to Yudien*, 38 IDELR 245 (OSEP 2003).

The OSEP opinion goes on to say that if there are state statutes and regulations that are inconsistent with respect to this IDEA requirement, the state must change the state level rules so that there is no conflict with IDEA.

As noted in the OSEP opinion, this is an area in which Kentucky's regulations must comply with Federal law, since Federal law is supreme. Kentucky's special education regulations do, in fact, comply with Federal law. School districts are bound by the Federal law and Kentucky's special education regulations and cannot allow social workers to act unlawfully in these situations.

The legal ability of social workers to act as "parents" in educational matters on behalf of students eligible under IDEA has been a long-standing issue in Kentucky. If your district is experiencing problems in this area, please contact Sammie Lambert, staff attorney for DECS at slambert@kde.state.ky.us

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The Question of the Week will be an on-going feature of E 'Specially' DECS. If you have a special education question that you believe would be of general interest to other Directors of Special Education, email your suggestion to Sammie Lambert at slambert@kde.state.ky.us

Amendment to the Family Educational Rights and Privacy Act (FERPA)

A new section to FERPA [34 CFR 99.30(d)(1) and (2)] has been added to allow the acceptance by agencies covered by FERPA (including public elementary and secondary schools) of signed and dated written consent in electronic format.

The new regulation, which is effective on May 21, 2004, states that signed and dated written consent may include a record and signature in electronic form that identifies and authenticates a particular person as the source of the electronic consent, and indicates the person's approval of the information contained in the electronic consent.

For additional information, see the Federal Register, Volume 69, No. 77/ Wednesday, April 21, 2004.

Contact Information for E 'Specially' DECS

- Sammie Lambert at slambert@kde.state.ky.us for information on newsletter content.
- Chris Thacker at 502 564-4738 for technical difficulties in receiving E 'Specially' DECS.

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Forwarding of E 'Specially' DECS is not only allowed, it is encouraged. Please send to staff in your district who may be able to benefit from this information.

Chris Thacker

Program Consultant
Data Policy Management and Research

Kentucky Department of Education
500 Mero Street - 1704 CPT
Frankfort, Kentucky 40601

Voice: 502.564.5279
Fax: 502.564.9166
Email: cthacker@kde.state.ky.us

<http://www.kyschools.org/KDE/Instructional+Resources/Student+and+Family+Support/Exceptional+Children/default.htm>

"Life is not measured by the number of breaths we take, but by the moments that take our breath away..."